



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 611**

**IN THE MATTER
OF
PATRICK J. OSER**

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Patrick J. Oser pursuant to Section 5 of the Commission's Enforcement Procedures. This agreement constitutes a consented-to order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 15, 1999, the Commission initiated, pursuant to G.L. c. 268A, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Oser. The Commission has concluded its inquiry and, on December 13, 2000, found reasonable cause to believe that Oser violated G.L. c. 268A.

The Commission and Oser now agree to the following findings of fact and conclusions of law:

1. Oser is a building contractor based in Boston. During the period here relevant, Oser did business as Oser Builders and as The Oser Corporation.
2. In 1994 and 1995, the City of Boston Public Facilities Department ("BPFD") awarded Oser contracts to renovate four buildings in Boston. The BPFD contracts provided that Oser would receive construction and subsidy loans from the BPFD to acquire and renovate the properties for resale to first-time home buyers.
3. Pursuant to the BPFD contracts, as the renovations proceeded in 1994, 1995 and 1996, Oser was required to submit requisitions to the BPFD requesting payment from the loan funds for "hard" costs (e.g., construction labor and materials) and "soft" costs (e.g., insurance and other overhead).
4. During the period here relevant, David L. Phinney worked as a construction specialist for the BPFD. As such, Phinney was a municipal employee as that term is defined in G.L. c. 268A, §1.
5. As part of his duties and responsibilities as a BPFD construction specialist, Phinney monitored the status and progress of housing rehabilitation projects done under contract with the BPFD, including Oser's projects. Phinney regularly visited project sites and performed inspections. In addition, as a construction specialist, Phinney received payment requisition forms from the contractors, reviewed the forms and, when warranted, signed his approval on the forms certifying that he had, in his official capacity, inspected the work required for the payment and found it to have been performed in good and workmanlike manner.

6. Shortly after Oser received the first BPFDD contract, Phinney and Oser entered into an arrangement pursuant to which Oser agreed to compensate Phinney for preparing the parts of Oser's requisitions to the BPFDD requesting payment for hard costs.

7. Between September 1994 and October 1996, Oser had Phinney prepare the hard costs portions of approximately twenty-three requisitions for payment by the BPFDD.

8. After Phinney prepared the hard costs sections of each of Oser's requisitions, he signed each as a BPFDD construction specialist making the certification described above. In so doing, Phinney, as a BPFDD construction specialist, approved the hard costs portion of each Oser requisition for payment by the BPFDD.

9. After privately preparing, and in his official capacity approving, the hard costs portions of the requisitions, Phinney gave them to Oser. Oser then prepared the portions of the requisitions relating to soft costs, and submitted the complete requisitions to the BPFDD for payment.

10. Pursuant to the requisitions, Oser was paid a total of more than \$500,000.^{1/} Oser, in turn, knowingly, directly and indirectly, paid Phinney a total of approximately \$5,000 for preparing the hard cost portions of the requisitions.

11. Section 17(b) of G.L. c. 268A, prohibits anyone from knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly offering, promising or giving compensation to a municipal employer in relation to any particular matter in which the same municipality is a party or has a direct and substantial interest.

12. Each of Oser's requisitions for payment by the BPFDD and each decision by or on behalf of the BPFDD to approve Oser's requisitions for payment was a particular matter.^{2/}

13. The City of Boston had direct and substantial interests in Oser's requisitions for payment and the BPFDD's decisions to approve those requisitions in part because the requisitions and payments were pursuant to a contract to which the city was a party. At all relevant times, Oser knew of the city's interest in the BPFDD requisitions.

14. As a BPFDD construction specialist, Phinney was a Boston municipal employee. At all relevant times, Oser knew that Phinney was a Boston municipal employee.

15. Thus, by, as described above, knowingly, directly or indirectly, offering, promising and giving Phinney compensation for helping to prepare Oser's payment requisitions to the BPFDD, Oser knowingly offered, promised and gave compensation to a Boston municipal employee in relation to a particular matter in which the City of Boston had a direct and substantial interest.

16. The compensation that Oser offered, promised or gave to Phinney was not as provided by law for the proper discharge of Phinney's official duties as a construction specialist.

17. Therefore, each time Oser offered, promised or gave compensation to Phinney for helping to prepare the BPFDD requisitions, Oser violated §17(b)^{3/} Oser fully cooperated with the Commission's investigation of this matter.

In view of the foregoing violations of G.L. c. 268A by Oser, the Commission has determined that the public interest would be served by the disposition of this matter without

further enforcement proceedings, on the basis of the following terms and conditions agreed to by Oser:

(1) that Oser pay to the Commission the sum of \$3,500 as a civil penalty for violating G.L. c. 268A; and

(2) that Oser waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: February 8, 2001

¹The Commission is not aware of any evidence that Oser failed to perform any work for which he was paid under his BPDFD contracts.

²"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

³According to Oser, he was not aware at the time of his above-described actions that he was violating the conflict of interest law, G.L. c. 268A. Ignorance of the law is, however, no defense to a violation of the conflict of interest law. *In re Doyle*, 1980 SEC 11, 13; see also *Scola v. Scola*, 318 Mass. 1, 7 (1945).